in the face of facts sufficient to put her on inquiry, purposely refrained from knowing of the fraud of Cable."

In New Jersey, a bank president, Damon, without authority issued a note to himself for $10,000, which was discounted by another bank, a statement being presented at the time from one Hebbard, which showed the bank to be indebted to Damon in a larger amount than the amount of the note. The court held that the discounting bank was justified under the circumstances in relying on the statements of Damon and had a valid charge against the bank, though as a matter of fact he was unauthorized to make the note and the bank owed him only $55.[12]

Another New Jersey case held that where bonds were issued and properly signed by the mayor and left in his custody, but without authority to negotiate, one who took *bona fide* from him got a good title. There a recovery was allowed because the holder was a holder in due course as defined in the Negotiable Instruments Law—having no notice at the time it was negotiated to him on any infirmity in the instrument or defect in the title of the person negotiating it.[13]

These three decisions are under the Negotiable Instruments Law and show authority for making the holder's actual *bona fides* the test of his rights. Even in the cases which hold the other way, the courts seize upon any extraneous knowledge the taker may have had to deprive him of the character of a *bona fide* holder and there seems to be no good reason why the same character of knowledge should not be allowed to corroborate that *bona fide* character which law presumes every holder to have. Because the rule laid down in the principal case would disallow such, it is submitted that it is too broad.

IN EXECUTORY CONTRACTS FOR THE SALE OF LAND, WHAT IS THE GROUND ON WHICH THE VENDOR, WHO HAS PAID THE TAXES, CAN RECOVER THEM FROM THE VENDEE IN POSSESSION?

In the case of *Miliville Aerie No.* 1836, *Fraternal Order of Eagles, v. Weatherby et al.*, recently decided by the New Jersey Court of Chancery, the Vice-Chancellor relied chiefly upon authority, and his reasoning was not clearly set forth.[1] That he had in

[12] *Hebberd v. Southwestern Land & Cattle Co.*, 55 N. J. Eq., 18.

[13] *Borough of Montvale v. People's Bank*, 74 N. J. L., 464.

[1] 88 Atl. Rep., 847.

mind, however, that class of quasi contracts which the law implies against one man in favor of another who, under compulsion, has discharged some obligation of the former and thereby enriched him, is clearly indicated by these words: "Such payments cannot be regarded as in any sense voluntary." Since the vendor held the legal title, in other words, he was responsible to the state for the taxes.[2] But how was the vendee rendered liable to the vendor? Eliminating contract and tort, neither of which appeared in the case, we have left only some obligation implied by law, as suggested above. Two elements of such obligation are clearly present—compulsion exerted upon the vendor, and his resulting payment. But where is the obligation of the vendee, which was discharged by such payment? Clearly he was not bound at law to pay the taxes to the state. An examination of the cases cited later in support of his liability, will show that such liability is confined to his relations with the vendor. As shown above, the state will look to the holder of the legal title.

Therefore his obligation, if any existed, was equitable. But the only equitable obligation which could possibly have rested upon him was to repay to the vendor the taxes assessed upon and paid by the latter. Strictly speaking, therefore, the only obligation in the case was the one which the law implied, as far as the vendee was concerned. This eliminates from our consideration a large class of quasi contracts, except for a few cases usually included under the head which we are discussing in the collection of cases on the subject.[3] These are, in general, cases where the plaintiff under compulsion, at least, of moral duty, or sometimes facing the alternative of loss to himself, has incurred expense in the preservation of defendant's property. Such a case was *Great Northern Railway Co. v. Swaffield,* where the plaintiff, a carrier, was compelled by the fault of the consignee and owner, here defendant, to incur liability for the keep of a horse, in preference to risking an action by turning it loose.[4] Plaintiff had judgment. In the Vermont case of *Beckwith v. Frisbie,* the carrier of oats had to incur storage charges during transit to prevent a loss, and collected the amount of these charges from the consignee on delivery.[5] The consignee then tried to reimburse himself by this

[2] 37 Cyc., 788, tit. Taxation.
[3] Scott, *Cases on Quasi Contracts;* Keener, *Cases on Quasi Contracts.*
[4] L. Rep., 9, Exc. 132.
[5] 32 Vt., 559.

action, and failed. In both these cases, it will be noted that property of the defendant was preserved, and he was thereby enriched, while in neither case did the payment redound to the advantage of the plaintiff. Therefore, while these decisions seem as nearly parallel to the principal case as any in the field of quasi contract, this important distinction is to be observed—that in the principal case, and in the similar decisions, to be cited later, on which it was based, the property which was protected was at least as much that of the vendor, who claimed reimbursement, as of the vendee, and the former had a valuable interest—that of security—to be preserved. Hence we cannot say, in any usual sense of the term, that the vendee has been enriched through the vendor's payment. It seems necessary to look to some matter collateral to the main transaction to discover a justification for the imposition of this liability.

What reason is there, why in natural justice as between these two parties, the burden should be borne by the vendee? Is the court blindly following the analogy of the risk of loss? Clearly not, for out of the twelve states[6] which make liability for taxes expressly dependent on possession, two, Pennslvania and Missouri,[7] expressly hold that possession has nothing to do with the risk of loss; while three, New Jersey, Georgia, and Wisconsin,[8] go part way toward this conclusion, either by adopting without express qualification the rule laid down by Lord Eldon in *Paine v. Meller,*[9] that the risk is on the vendee from the time of the bargain, or by inclining, as Georgia and Wisconsin do, toward the minority view that risk is on the vendor until the date for conveyance has arrived. Also, not one of these states holds expressly that possession is a condition precedent to the incidence of the risk of loss upon the vendee. It is obvious, therefore, that the burden of taxes is not the inevitable concomitant of the risk of loss.

We are driven to the conclusion that the burden of taxes is made to accompany possession, because he who receives the

[6] New Jersey, Pennsylvania, Iowa, Arkansas, eGorgia, Michigan, Missouri, Ohio, Utah, Vermont, West Virginia, and Wisconsin.

[7] *Robb v. Mann,* 11 Pa., 300; *Manning v. North British Insurance Co.,* 123 Mo. App., 456.

[8] *Marion v. Wolcott,* 68 N. J. Eq., 20; *Phinizy v. Guernsey,* 111 Ga., 346; *Wetzler v. Duffy,* 78 Wis., 170.

[9] 6 Ves., 349.

rents and profits ought, in natural justice, to bear it. But we must be careful to distinguish the case of a tenant from that of one who is the actual and ultimate recipient of the rents and profits. In the principal case, attention is called to the New Jersey statute which provides that, although the taxes may be levied against the tenant, he has recourse over against the landlord, because the latter is of course the real recipient of the rents and profits.[10] The same rule will be found in Cyc.[11] Under what circumstances, then, does the vendee under an executory contract correspond to a tenant, and when does he enjoy these benefits exclusively? First, a mere contract for the sale of land, conveyance at a future date, does not, in the absence of some express stipulation, give the vendee the right to possession.[12] (These citations have been confined within the twelve states mentioned above.[6] Four of them hold as above stated, and in the other eight no decision in point can be found.) When, therefore, we find the vendee in possession, his presence can be explained only on the basis of special contract, the consideration for which is the payment of rent, or some concession as to the terms of sale, or on the simple basis of the vendor's generosity. If the first supposition is true, how does his position differ from that of the tenant? He has paid for the use of the premises, just as the tenant has, and if the mere fact that he is to obtain title in the future ought to render him liable for taxes, why not impose the same burden on a vendee not in possession? A case exactly illustrating this point was that of *Clinton v. Shugart,* decided in Iowa.[13] Here the vendee under an executory contract was in possession as a tenant under lease, the date for conveyance being set at the end of the term, and the vendor was held liable for the taxes.

Where the vendee's possession is a pure gratuity, however, and he receives the rents and profits without paying a consideration, there is some basis in natural justice for making him pay the tax. It is submitted, however, that for a court to imply an obligation against one man in favor of another, simply because the latter has on a previous occasion given the former a present, is quite unique in the field of quasi contract.

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[10] P. L., 1903, p. 424, s. 46.

[11] 24 Cyc., 1074, and cases cited.

[12] *Druse v. Wheeler,* 22 Mich., 439; *Doe v. Roe,* 39 Ga., 91; *Du Bois v. Baum,* 46 Pa., 537; *Prendergast v. Burlington R. R. Co.,* 53 Iowa, 326.

[13] 126 Iowa, 179.